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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 479

NORMAN J. PFAFF AND FRANK B. WALLACE, EXECUTORS OF THE ESTATE OF WILLIAM L. WALLACE, DECEASED, PETITIONERS

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 9-11) is not officially reported. The *per curiam* opinion of the Circuit Court of Appeals (R. 48) is reported in 113 F. (2d) 114.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 24, 1940 (R. 48-49). The petition for a writ of certiorari was filed on Octo-

ber 1, 1940, and granted on November 12, 1940 (R. 49). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a deceased partner's share of income earned, but not yet received, by the partnership should be included in the gross income of the partner for the taxable period ending with his death, where both the partnership and the partner kept books on the cash basis.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix to our brief filed in *Helvering v. Enright*, No. 436, this Term, to be argued herewith.

STATEMENT

The pertinent facts, as found by the Board of Tax Appeals (R. 9-11), may be summarized as follows:

During 1935 the decedent, a practicing physician, was a member of two medical partnerships: one created in 1933 and dissolved by limitation of the partnership agreement on June 30, 1935, and the other created on July 1, 1935, and in existence at the date of his death on December 25 of that year. In each partnership the decedent was entitled to 40 percent of the profits. The second

partnership, upon organization, took over the assets and assumed the liabilities of the prior partnership. (R. 9.)

At the time of decedent's death there were partnership accounts outstanding for services rendered patients during decedent's lifetime in a total amount of \$69,061.59, of which decedent's share was 40% or \$27,624.64. How much of this total represented accounts receivable of the first partnership is not disclosed. Between the date of decedent's death and October 1, 1936, net payments received on these accounts aggregated \$16,251.21, of which \$5,961.80 was paid decedent's estate as his net distributive share. On the last named date decedent's interest in the remaining uncollected accounts was sold by his executors for \$500. In the estate tax return filed for decedent's estate his interest in these uncollected accounts of the partnership, as of the date of his death, was included at a value of \$6,693.14. (R. 9, 11.) Each of the partnerships maintained its accounts on a cash basis (R. 9).

The Commissioner increased decedent's gross income by \$5,689.19,¹ as the sum accruable on account of his interest in these partnership receivables at the time of his death, under Section 42 of

¹ The Board noted (R. 10-11) that the Commissioner, "in his determination of the deficiency, has not included in decedent's income, as accrued, his 40 percent share in these accruables, at their face amount. Only approximately 20 per cent of that face value is included."

the Revenue Act of 1934 (R. 6, 9-10). The Board of Tax Appeals upheld the determination of the Commissioner (R. 11). Upon appeal, the Circuit Court of Appeals for the Second Circuit affirmed the decision of the Board *per curiam* (R. 48).

ARGUMENT

This case is identical in all essential respects with *Helvering v. Enright*, No. 436, this Term, to be argued herewith. We therefore respectfully refer the Court to the argument in our brief filed in the *Enright* case.

One minor point of difference affects Point 3 (pp. 28-34) of the argument in our brief in the *Enright* case. The taxpayer in the *Enright* case contends that "the earned proportion of the estimated receipts from unfinished business" was not "accrued" within the meaning of Section 42 of the Revenue Act of 1934. No such problem arises here. The outstanding accounts in the instant case would be considered "accrued" under any system of accrual accounting. *Continental Tie & L. Co. v. United States*, 286 U. S. 290, 296. Furthermore, there scarcely can be any question as to the valuation placed by the Commissioner upon these outstanding accounts. As the Board noted (R. 11): "The amount included by respondent is less than the amount actually realized from decedent's interest in these receivables and is less than the amount declared by petitioners

as the value of these receivables in the estate tax return which they filed."²

CONCLUSION

It is submitted that, for the reasons stated in our brief filed in *Helvering v. Enright*, No. 436, this Term, to be argued herewith, the decision of the court below is correct and should be affirmed.

Respectfully,

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EDWIN E. HUDDLESON, Jr.,
Attorney.

FEBRUARY 1941.

² See also note 1, *supra*, p. 3.

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SUPREME COURT OF THE UNITED STATES.

No. 479.—OCTOBER TERM, 1940.

Norman J. Pfaff and Frank B. Wallace, Executors of the Estate of William L. Wallace, Deceased, Petitioners, vs. Commissioner of Internal Revenue.	}	On Writ of Certiorari to the United States Circuit Court of Ap- peals for the Second Circuit.
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[March 21, 1941.]

Mr. Justice REED delivered the opinion of the Court.

This case presents the same question as *Helvering v. Enright*, decided today. Petitioners are the executors of a deceased physician who during 1935 was a member of a medical partnership and entitled to forty per cent of its profits. He died December 25, 1935, on which date there were outstanding about \$69,000 of partnership accounts receivable for services rendered to patients during his lifetime. His death worked a dissolution of the partnership under § 62(4) of the New York Partnership Law. The decedent's interest in these accounts came to over \$27,000. Both he and the partnership were on a cash basis. Pursuant to section 42 of the Revenue Act of 1934 and article 42(1) of Treasury Regulations 86, the commissioner included the decedent's share of the accounts receivable in his 1935 income, though only at about one-fifth of face value. The Board of Tax Appeals sustained the commissioner's view of the statute, and also ruled that the valuation of the decedent's interest in the accounts at one-fifth of face value was amply supported. The Circuit Court of Appeals, without writing an opinion, affirmed the Board. 113 F. (2d) 114. Because of a conflict with the Third Circuit's decision in the *Enright* case, *supra*, we granted certiorari.

There is no relevant difference between these facts and *Helvering v. Enright*. For the reasons stated in that opinion it was proper to include in the decedent's 1935 income the fair value of his interest in the accounts.

Affirmed.